

The Honorable Franklin D. Burgess

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

NATHAN WITT, a single man, VALERIE L.
WITT, and DANIEL A. WITT, husband and wife,
individually, as a marital community.

Plaintiffs,

v.

MARION WARE, et al.,

Defendants.

No. C04-5139FDB

DECLARATION OF
GARY A. PREBLE IN RESPONSE TO
DEFENDANTS' MOTION TO DISMISS,
PURSUANT TO FRCP 37(d) FOR
PLAINTIFF'S FAILURE TO ATTEND
HIS OWN DEPOSITION AND FOR
COSTS AND FEES

I am the attorney for the Plaintiffs in this matter and I make this declaration in support of
Plaintiffs' Response to Motion to Dismiss for Failure to Attend His Own Deposition.

While Nathan did not appear at his deposition, he has since been incarcerated and a
deposition has been set at the Olympia jail on July 20, 2005. I met with him at the jail prior to
his preliminary hearing. As a result of his being in jail, there will be a deposition on Wednesday,
July 20, 2005.

DECLARATION OF GARY A. PREBLE
IN SUPPORT OF PLAINTIFFS' RESPONSE TO MOTION
FOR PARTIAL SUMMARY JUDGMENT RE CLAIMS
UNDER 1985, 19086 AND 1988
Page 1 of 4

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1 I personally told Mr. James, Defendants' attorney, there was a possibility of Nathan not
 2 being available at the scheduled time for the deposition. I believe we spoke about it several
 3 times, and I believe it was the day before the scheduled deposition I advised him that Nathan
 4 might not appear. I told him that Mrs. Witt would have to go look for him "on the streets", and I
 5 believe I told him Mrs. Witt might go to the bank where he gets a small daily allotment of cash
 6 for his expenses. Mrs. Witt is Nathan's guardian, and a copy of her Letters of Guardianship is
 7 attached hereto. Defendants have always been aware that, except when he is incarcerated, Nathan
 8 is homeless and lives "on the streets"; specifically, I have heard Defendant Big Eagle explain
 9 how she was able to contact him at a community center in Olympia.
 10

11 On the day of scheduled deposition I suggested to Defendants' counsel, Mr. James, that
 12 he need not appear and go to the expense of bringing a reporter, and that I would notify Mr.
 13 James if Nathan appeared so he could come over to depose him. (His office is about 10 to 15
 14 minutes drive.) He said he would come anyway. I would have willingly given a declaration that
 15 Nathan did not appear, thus obviating the need for Mr. James' appearance and costs. Mr. James
 16 chose to come anyway, and I offered him the opportunity to ask Mrs. Witt questions while she
 17 was there.
 18

19 As to the Interrogatories, I spoke with Nathan personally and went over the depositions
 20 with him. He was unable to give any meaningful answers, and I so notified Mr. James. Any
 21 value he would get from the Interrogatories can be obtained at the upcoming deposition.
 22

23 I declare under penalty of perjury under the laws of the State of Washington that the
 24 foregoing is true and correct. Signed this 18th day of July at Olympia, Washington.
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 26

/s/ Gary A. Preble

GARY A. PREBLE

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2005, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

paulj@atg.wa.gov

/s/ Gary A. Preble
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